IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 2022 of 1993

Between:

K.Visweswra Raju S/o.K.Rajan Raju
High Court of Andhra Pradesh, Hyderabad

..... PETITIONER

AND

1 Government of Andhra Pradesh rep.by its Secretary
Finance & Planning (FW.P.S.C.) Department, Secretariat, Buildings, Hyderabad.
2 Accountant General (A&E), Andhra Pradesh, Hyderabad-500 463.
3 Registrar (Admn), High Court of AP, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order especially one in the nature of writ of mandamus declaring GO.Ms.lNo.177 Finance and Planning (FW.PSC) Department Dt.28/06/1988 as illegal, arbitrary and unconstitutional and consequently direct the respondents to treat the Family Planning and Law Qualification increments which were drawn by the petitioner while he was in service as basic pay for the purpose of pension and gratuity.

Counsel for the Petitioner: MR.M.SURENDER RAO

Counsel for the Respondent Nos.1 and 2: GP FOR FINANCE & PLANNING

Counsel for the Respondent No.3: SMT. M. Bhaskara Lakshmi

The Court made the following Oral Order:

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION No. 2022 of 1993

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ORAL ORDER: (per Sri Devinder Gupta, CJ)

Petitioner joined as L.D.C. on 4.7.1969. He underwent Family Planning Operation on 17.5.1976 and was promoted as Assistant Section Officer on 25.11.1976. While working as Asst. Section Officer, he acquired higher qualification in September, 1980, before he was promoted as Deputy Section Officer. He was granted increment for Family Planning operation on 10.8.1983 and was also granted increments for acquiring higher qualification with effect from 1st July, 1986. He was promoted as Deputy Section Officer on 24.8.1983 and was promoted as Section Officer on 1st

September, 1988. Petitioner took voluntary retirement on 30.6.1992. Petitioner, in this petition, has questioned the legality and validity of G.O. Ms. No. 177, dated 28.6.1988, which defined the term 'Basic Pay' as referred to in the said G.O., would mean the pay in the Revised Pay Scales, 1986 and that the said G.O., would apply to those employees who retire or die in service on or after the date of issue of those orders. The Government in the said order clarified that Pensionary Benefits, i.e., Pension, Family Pension, Service Gratuity and Retirement Gratuity shall be calculated with reference to the Basic Pay as defined in F.R. 9 (21)(a)(i). Emoluments for the purpose of calculation of retirement benefits and death benefits would mean Basic Pay as defined in F.R. 9(21)(a)(i) and the average emoluments will be determined with reference to Basic Pay as defined in F.R. 9 (21)(a)(i) drawn by a Government Servant during the last ten months of his service.

The net result of issuance of the said G.O. was that the State Government decided to limit the pension and pensionary benefits only to the Basic Pay as defined in F.R. 9(21)(a)(i) without reckoning the Special Pay and Personal Pay with effect from 28.6.1988 as amended by G.O. Ms. No. 177, Finance & Planning (FW.P.S.C.) Department, dated 28.6.1988. The increments earned by the petitioner because of Family Planning Operation and acquiring of higher degree qualification, thus, are not included in the Basic Pay and petitioner's submission is that this would amount to declining him of the right which had accrued to him while he was in service, for the purpose of computing Pension.

In the counter affidavit filed by the respondents, it has been explained that by G.O. Ms. No. 182, Finance, (PRC-1), dated 17.7.1987, the Government has sanctioned advance increments for possessing or acquiring higher qualifications in the revised Pay Scales of 1986 for the various categories of persons. The said P.R.C. 1986 had not recommended Advance Increments for the employees working in the High Court of A.P. and the Lower Courts and it was pursuant to various interim orders passed in different writ petitions, those increments were allowed to the members of the judiciary including those working in the lower Courts belonging to Judicial departments.

Government of India issued O.M. No. 2/1/87-PIC-II, dated 14.4.1987 based upon the recommendation of the 4th Central Pay Commission which defined the term 'Emoluments' as follows:

> "The term Emoluments for purposes of calculating various retirement and death benefits shall mean basic pay as defined in FR.9(21)(a)(i), which the Govt. servant was receiving immediately before his retirement or on the date of his death. Similarly the term "Average Emoluments" shall be determined with reference to emoluments drawn by a Govt. servant during the last 10 months of his service."

Based upon the Government of India's order, G.O. Ms. No. 177, dated 28.6.1988 was issued defining Emoluments under Rule 31 of Revised Pension Rules, 1980. As per the said orders, the Family Planning Incentive Increment and the increments granted for acquiring higher qualification cannot be allowed for the purpose of computing Pension and Retirement Gratuity.

Admittedly, the relevant Rules which defined the Basic Pay, did not include the Family Planning Incentive Increment and increments for acquiring higher qualification for the purpose of Pension and Retirement Gratuity.

There is hardly any force in the writ petition. The writ petition shall stand accordingly dismissed. No costs.

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DEVINDER GUPTA, CJ

Date: 6th October, 2004

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C.V.RAMULU,J

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To

1 The Secretary, Finance & Planning (FW.P.S.C.) Department, Government of Andhra Pradesh,
Secretariat Buildings, Hyderabad.
2 The Accountant General (A&E), Andhra Pradesh, Hyderabad-500 463.
3 The Registrar (Admn), High Court of AP, Hyderabad.

4. Two CCs. to the Government pleader for Finance & Planning, High Court Buildings, Hyderabad (OUT)

5. Two C.D. copies